

**Senate File 2312 - Introduced**

SENATE FILE 2312  
BY COMMITTEE ON HUMAN  
RESOURCES

(SUCCESSOR TO SSB 3137)

**A BILL FOR**

1 An Act relating to persons with mental health illnesses and  
2 substance-related disorders.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 80B.11, subsection 1, paragraph c, Code  
2 2011, is amended by adding the following new subparagraph:

3 NEW SUBPARAGRAPH. (3) In-service training under this  
4 paragraph "c" shall include the requirement that all law  
5 enforcement officers complete a course on mental health at  
6 least once every four years. In developing the requirements  
7 for this training, the director shall seek input from mental  
8 health care providers and mental health care consumers.

9 Sec. 2. Section 125.91, subsection 1, Code Supplement 2011,  
10 is amended to read as follows:

11 1. The procedure prescribed by this section shall only be  
12 used for an intoxicated person who has threatened, attempted,  
13 or inflicted physical self-harm or harm on another, and is  
14 likely to inflict physical self-harm or harm on another unless  
15 immediately detained, or who is incapacitated by a chemical  
16 substance, ~~if that person cannot be taken into immediate~~  
17 ~~custody under sections 125.75 and 125.81 because immediate~~  
18 ~~access to the court is not possible~~ an application has not been  
19 filed naming the person as the respondent pursuant to section  
20 125.75 and the person cannot be ordered into immediate custody  
21 and detained pursuant to section 125.81.

22 Sec. 3. Section 135C.3, subsection 1, Code 2011, is amended  
23 to read as follows:

24 1. A licensed nursing facility shall provide an organized  
25 twenty-four-hour program of services commensurate with the  
26 needs of its residents and under the immediate direction  
27 of a licensed nurse. Medical and nursing services must be  
28 provided under the direction of either a house physician or an  
29 individually selected physician. Surgery or obstetrical care  
30 shall not be provided within the facility. An admission to  
31 the nursing facility must be based on a physician's written  
32 order certifying that the individual being admitted requires  
33 no greater degree of nursing care than the facility to which  
34 the admission is made is licensed to provide and is capable  
35 of providing. The nursing facility is not required to admit

1 an individual through court order, referral, or other means  
2 without the express prior approval of the administrator of the  
3 nursing facility.

4 Sec. 4. Section 135C.4, Code 2011, is amended to read as  
5 follows:

6 **135C.4 Residential care facilities.**

7 1. Each facility licensed as a residential care facility  
8 shall provide an organized continuous twenty-four-hour program  
9 of care commensurate with the needs of the residents of the  
10 home and under the immediate direction of a person approved  
11 and certified by the department whose combined training  
12 and supervised experience is such as to ensure adequate and  
13 competent care.

14 2. All admissions to residential care facilities shall be  
15 based on an order written by a physician certifying that the  
16 individual being admitted does not require nursing services or  
17 that the individual's need for nursing services can be avoided  
18 if home and community-based services, other than nursing care,  
19 as defined by this chapter and departmental rule, are provided.

20 3. For the purposes of this section, the home and  
21 community-based services to be provided shall be limited to the  
22 type included under the medical assistance program provided  
23 pursuant to chapter 249A, shall be subject to cost limitations  
24 established by the department of human services under the  
25 medical assistance program, and except as otherwise provided by  
26 the department of inspections and appeals with the concurrence  
27 of the department of human services, shall be limited in  
28 capacity to the number of licensed residential care facilities  
29 and the number of licensed residential care facility beds in  
30 the state as of December 1, 2003.

31 4. A residential care facility is not required to admit  
32 an individual through court order, referral, or other means  
33 without the express prior approval of the administrator of the  
34 residential care facility.

35 Sec. 5. Section 228.1, subsection 6, Code 2011, is amended

1 by striking the subsection and inserting in lieu thereof the  
2 following:

3 6. "*Mental health professional*" means an individual who has  
4 either of the following qualifications:

5 a. The individual meets all of the following requirements:

6 (1) The individual holds at least a master's degree in a  
7 mental health field, including but not limited to psychology,  
8 counseling and guidance, nursing, and social work, or is an  
9 advanced registered nurse practitioner, a physician assistant,  
10 or a physician and surgeon or an osteopathic physician and  
11 surgeon.

12 (2) The individual holds a current Iowa license if  
13 practicing in a field covered by an Iowa licensure law.

14 (3) The individual has at least two years of post-degree  
15 clinical experience, supervised by another mental health  
16 professional, in assessing mental health needs and problems and  
17 in providing appropriate mental health services.

18 b. The individual holds a current Iowa license if  
19 practicing in a field covered by an Iowa licensure law and is  
20 a psychiatrist, an advanced registered nurse practitioner who  
21 holds a national certification in psychiatric mental health  
22 care registered by the board of nursing, a physician assistant  
23 practicing under the supervision of a psychiatrist, or an  
24 individual who holds a doctorate degree in psychology and is  
25 licensed by the board of psychology.

26 Sec. 6. Section 229.1, Code Supplement 2011, is amended by  
27 adding the following new subsection:

28 NEW SUBSECTION. 8A. "*Mental health professional*" means the  
29 same as defined in section 228.1.

30 Sec. 7. Section 229.1, subsection 14, Code Supplement 2011,  
31 is amended by striking the subsection.

32 Sec. 8. Section 229.1, subsection 16, Code Supplement 2011,  
33 is amended to read as follows:

34 16. "*Serious emotional injury*" is an injury which does not  
35 necessarily exhibit any physical characteristics, but which can

1 be recognized and diagnosed by a licensed physician or other  
2 ~~qualified~~ mental health professional and which can be causally  
3 connected with the act or omission of a person who is, or is  
4 alleged to be, mentally ill.

5     Sec. 9. NEW SECTION.   **229.5A Preapplication screening**  
6 **assessment — program.**

7     Prior to filing an application for involuntary  
8 hospitalization pursuant to section 229.6, the clerk of  
9 the district court or the clerk's designee shall inform  
10 the interested person referred to in section 229.6,  
11 subsection 1, about the option of requesting a preapplication  
12 screening assessment through a preapplication screening  
13 assessment program. The state court administrator shall  
14 prescribe practices and procedures for implementation of the  
15 preapplication screening assessment program.

16     Sec. 10. Section 229.6, Code 2011, is amended to read as  
17 follows:

18     **229.6 Application for order of involuntary hospitalization.**

19     1. Proceedings for the involuntary hospitalization of an  
20 individual may be commenced by any interested person by filing  
21 a verified application with the clerk of the district court of  
22 the county where the respondent is presently located, or which  
23 is the respondent's place of residence. The clerk, or the  
24 clerk's designee, shall assist the applicant in completing the  
25 application. The application shall:

26     ~~1-~~ a. State the applicant's belief that the respondent is  
27 seriously mentally impaired.

28     ~~2-~~ b. State any other pertinent facts.

29     ~~3-~~ c. Be accompanied by any of the following:

30     ~~a-~~ (1) A written statement of a licensed physician in  
31 support of the application; ~~or.~~

32     ~~b-~~ (2) One or more supporting affidavits otherwise  
33 corroborating the application; ~~or.~~

34     ~~c-~~ (3) Corroborative information obtained and reduced to  
35 writing by the clerk or the clerk's designee, but only when

1 circumstances make it infeasible to comply with, or when the  
2 clerk considers it appropriate to supplement the information  
3 supplied pursuant to, either ~~paragraph "a" or paragraph "b" of~~  
4 ~~this subsection~~ subparagraph (1) or (2).

5 2. Prior to the filing of an application pursuant to this  
6 section, the clerk or the clerk's designee shall inform the  
7 interested person referred to in subsection 1 about the option  
8 of requesting a preapplication screening assessment pursuant  
9 to section 229.5A.

10 Sec. 11. Section 229.10, subsection 1, paragraph b, Code  
11 2011, is amended to read as follows:

12 *b.* Any licensed physician conducting an examination pursuant  
13 to this section may consult with or request the participation  
14 in the examination of any ~~qualified~~ mental health professional,  
15 and may include with or attach to the written report of the  
16 examination any findings or observations by any ~~qualified~~  
17 mental health professional who has been so consulted or has so  
18 participated in the examination.

19 Sec. 12. Section 229.12, subsection 3, paragraph b, Code  
20 2011, is amended to read as follows:

21 *b.* The licensed physician or ~~qualified~~ mental health  
22 professional who examined the respondent shall be present at  
23 the hearing unless the court for good cause finds that the  
24 licensed physician's or ~~qualified~~ mental health professional's  
25 presence or testimony is not necessary. The applicant,  
26 respondent, and the respondent's attorney may waive the  
27 presence or the telephonic appearance of the licensed physician  
28 or ~~qualified~~ mental health professional who examined the  
29 respondent and agree to submit as evidence the written  
30 report of the licensed physician or ~~qualified~~ mental health  
31 professional. The respondent's attorney shall inform the  
32 court if the respondent's attorney reasonably believes that  
33 the respondent, due to diminished capacity, cannot make an  
34 adequately considered waiver decision. "Good cause" for finding  
35 that the testimony of the licensed physician or ~~qualified~~

1 mental health professional who examined the respondent is not  
2 necessary may include but is not limited to such a waiver.  
3 If the court determines that the testimony of the licensed  
4 physician or ~~qualified~~ mental health professional is necessary,  
5 the court may allow the licensed physician or the ~~qualified~~  
6 mental health professional to testify by telephone.

7 Sec. 13. Section 229.19, subsection 1, paragraph d, Code  
8 2011, is amended by adding the following new subparagraph:

9 NEW SUBPARAGRAPH. (7) To utilize the related best practices  
10 for the duties identified in this paragraph "d" developed and  
11 promulgated by the judicial council.

12 Sec. 14. Section 229.19, subsection 1, Code 2011, is amended  
13 by adding the following new paragraph:

14 NEW PARAGRAPH. e. An advocate may also be appointed  
15 pursuant to this section for an individual who has  
16 been diagnosed with a co-occurring mental illness and  
17 substance-related disorder.

18 Sec. 15. Section 229.22, subsection 1, Code Supplement  
19 2011, is amended to read as follows:

20 1. The procedure prescribed by this section shall ~~not~~ be  
21 used ~~unless~~ when it appears that a person should be immediately  
22 detained due to serious mental impairment, but ~~that person~~  
23 ~~cannot be immediately detained by the procedure prescribed~~  
24 ~~in sections 229.6 and 229.11 because there is no means of~~  
25 ~~immediate access to the district court~~ an application has not  
26 been filed naming the person as the respondent pursuant to  
27 section 229.6, and the person cannot be ordered into immediate  
28 custody and detained pursuant to section 229.11.

29 Sec. 16. Section 602.1209, Code 2011, is amended by adding  
30 the following new subsection:

31 NEW SUBSECTION. 15A. Prescribe practices and procedures  
32 for the implementation of the preapplication screening  
33 assessment program referred to in section 229.5A.

34 Sec. 17. CONTINUATION OF WORKGROUP BY JUDICIAL BRANCH AND  
35 DEPARTMENT OF HUMAN SERVICES — CONSOLIDATION OF SERVICES —

1 PATIENT ADVOCATE. The judicial branch and department of human  
2 services shall continue the workgroup implemented pursuant  
3 to 2010 Iowa Acts, chapter 1192, section 24, subsection  
4 2, and extended pursuant to 2011 Iowa Acts, chapter 121,  
5 section 2, to study and make recommendations relating to the  
6 consolidation of the processes for involuntary commitment  
7 for persons with substance-related disorders under chapter  
8 125, for intellectual disability under chapter 222, and for  
9 serious mental illness under chapter 229. The workgroup  
10 shall also include representatives from the department of  
11 public health. The workgroup shall also study and make  
12 recommendations concerning the feasibility of establishing an  
13 independent statewide patient advocate program for qualified  
14 persons representing the interests of patients suffering from  
15 mental illness, intellectual disability, or a substance-related  
16 disorder and involuntarily committed by the court, in any  
17 matter relating to the patients' hospitalization or treatment  
18 under chapters 125, 222, and 229, and shall also include  
19 recommendations for a patient advocate representing the  
20 interests of patients found not guilty of a crime by reason of  
21 insanity. The workgroup shall also consider the implementation  
22 of consistent reimbursement standards for patient advocates  
23 supported by a state-funded system and shall also consider the  
24 role of the advocate for a person who has been diagnosed with  
25 a co-occurring mental illness and substance-related disorder.  
26 The workgroup shall solicit input from current mental health  
27 advocates and mental health and substance-related disorder care  
28 providers and individuals receiving services whose interests  
29 would be represented by an independent statewide advocate  
30 program and shall submit a report on the study and make  
31 recommendations to the governor and the general assembly by  
32 December 1, 2012.

33 Sec. 18. COMPREHENSIVE JAIL DIVERSION PROGRAM — MENTAL  
34 HEALTH COURTS — STUDY. The division of criminal and juvenile  
35 justice planning of the department of human rights shall

1 conduct a study regarding the possible establishment of a  
2 comprehensive statewide jail diversion program, including the  
3 establishment of mental health courts, for nonviolent criminal  
4 offenders who suffer from mental illness. The division  
5 shall solicit input from the department of human services,  
6 the department of corrections, and other members of the  
7 criminal justice system including but not limited to judges,  
8 prosecutors, and defense counsel, and mental health treatment  
9 providers and consumers. The division shall establish the  
10 duties, scope, and membership of the study commission and shall  
11 also consider the feasibility of establishing a demonstration  
12 mental health court. The division shall submit a report on the  
13 study and make recommendations to the governor and the general  
14 assembly by December 1, 2012.

15 Sec. 19. PRIOR LAW ENFORCEMENT MENTAL HEALTH TRAINING. A  
16 law enforcement officer who has completed academy-approved  
17 mental health training within the twelve-month period prior to  
18 the effective date of this Act, either through in-service or  
19 academy-approved basic training, shall be considered to have  
20 met the first four-year mental health training requirement of  
21 section 80B.11, subsection 1, paragraph "c", subparagraph (3),  
22 as enacted in this Act.

23 EXPLANATION

24 This bill relates to persons with mental health illnesses  
25 and substance-related disorders.

26 MENTAL HEALTH TRAINING — LAW ENFORCEMENT. The bill  
27 requires all law enforcement officers to complete a course  
28 on mental health at least once every four years and requires  
29 the director of the law enforcement academy, subject to  
30 the approval of the Iowa law enforcement council, to adopt  
31 rules relating to mental health training for law enforcement  
32 officers, with input from mental health care providers and  
33 mental health care consumers. A law enforcement officer who  
34 has completed academy-approved mental health training within  
35 the 12-month period prior to the effective date of the bill

1 will be considered to have met the first four-year mental  
2 health training requirement prescribed in the bill.

3 RESIDENTIAL CARE FACILITIES AND LICENSED NURSING FACILITIES  
4 — ADMITTANCE. The bill provides that a nursing facility  
5 or residential care facility is not required to admit an  
6 individual through court order, referral, or other means  
7 without the express prior approval of the administrator of the  
8 residential care facility.

9 EMERGENCY DETENTION AND HOSPITALIZATION — PERSONS WITH  
10 SUBSTANCE-RELATED DISORDERS AND MENTAL HEALTH ILLNESSES.  
11 The bill amends Code sections 125.91 and 229.22 relating to  
12 after-hours access to emergency detention and hospitalization  
13 procedures for an intoxicated person who has threatened,  
14 attempted, or inflicted physical self-harm or harm on another,  
15 and is likely to inflict physical self-harm or harm on another  
16 unless immediately detained, or who is incapacitated by a  
17 chemical substance, or for a seriously mentally impaired  
18 person. Current law provides for the immediate custody of such  
19 persons in an emergency situation only after an application  
20 for involuntary commitment or hospitalization has been filed,  
21 which is an option only during regular court hours. The bill  
22 amends the current emergency detention and hospitalization  
23 procedures available for such persons to apply only when there  
24 is no immediate access to the district court to allow access to  
25 emergency detention and treatment services, at all times, even  
26 if an application for involuntary commitment or hospitalization  
27 has not been filed.

28 QUALIFIED MENTAL HEALTH PROFESSIONAL. The bill amends  
29 the definition of "mental health professional" in Code  
30 chapter 228 (relating to the disclosure of mental health and  
31 psychological information). The bill eliminates the definition  
32 of "qualified mental health professional" in Code chapter 229  
33 (hospitalization of persons with mental illness) and adopts the  
34 new definition of "mental health professional" in the bill for  
35 purposes of Code chapter 229.

1       PREAPPLICATION SCREENING ASSESSMENT. The bill provides that  
2 prior to filing an application for involuntary hospitalization  
3 pursuant to Code section 229.6, the clerk of the district court  
4 or the clerk's designee is required to inform the interested  
5 person referred to in Code section 229.6, subsection 1,  
6 about the option of requesting a preapplication screening  
7 assessment through a preapplication screening assessment  
8 program. The bill requires the state court administrator to  
9 prescribe practices and procedures for implementation of the  
10 preapplication screening assessment program.

11       A conforming change is made to Code section 229.6 requiring  
12 the district court clerk or the clerk's designee to inform  
13 the interested person about the option of requesting a  
14 preapplication screening assessment of the proposed respondent  
15 prior to the filing of an application for involuntary  
16 commitment. A conforming change is also made to Code  
17 section 602.1209 relating to the duties of the state court  
18 administrator.

19       MENTAL HEALTH ADVOCATE. The bill provides that a mental  
20 health advocate shall utilize the related best practices for  
21 the mental health advocate's duties identified in Code section  
22 229.19 developed and promulgated by the judicial council.  
23 The bill allows a mental health advocate to be appointed by  
24 the appropriate appointing authority for an individual who  
25 has been diagnosed with a co-occurring mental illness and  
26 substance-related disorder.

27       CONTINUATION OF WORKGROUP BY JUDICIAL BRANCH AND  
28 DEPARTMENT OF HUMAN SERVICES — CONSOLIDATION OF SERVICES  
29 — PATIENT ADVOCATE. The bill requires the judicial branch  
30 and department of human services to continue the workgroup  
31 implemented pursuant to 2010 Iowa Acts, chapter 1192, section  
32 24, subsection 2, and extended pursuant to 2011 Iowa Acts,  
33 chapter 121, section 2, to study and make recommendations  
34 relating to the consolidation of the processes for involuntary  
35 commitment for persons with substance-related disorders under

1 Code chapter 125, for intellectual disability under Code  
2 chapter 222, and for serious mental illness under Code chapter  
3 229. The workgroup shall also include representatives from  
4 the department of public health. The workgroup shall also  
5 study and make recommendations concerning the feasibility of  
6 establishing an independent statewide patient advocate program  
7 for qualified persons representing the interests of patients  
8 suffering from mental illness, intellectual disability, or a  
9 substance-related disorder and involuntarily committed by the  
10 court, and shall also include recommendations for a patient  
11 advocate representing the interests of patients found not  
12 guilty of a crime by reason of insanity. The workgroup shall  
13 also consider the implementation of consistent reimbursement  
14 standards for patient advocates and the role of the advocate  
15 for a person who has been diagnosed with a co-occurring mental  
16 illness and substance-related disorder. The workgroup shall  
17 submit a report on the study and make recommendations to the  
18 governor and the general assembly by December 1, 2012.

19       COMPREHENSIVE JAIL DIVERSION PROGRAM — MENTAL HEALTH  
20 COURTS — STUDY. The bill directs the division of criminal and  
21 juvenile justice planning of the department of human rights  
22 to conduct a study regarding the possible establishment of a  
23 comprehensive statewide jail diversion program, including the  
24 establishment of mental health courts, for nonviolent criminal  
25 offenders who suffer from mental illness. The division  
26 shall solicit input from the department of human services,  
27 the department of corrections, and other members of the  
28 criminal justice system including but not limited to judges,  
29 prosecutors, and defense counsel, and mental health treatment  
30 providers and consumers. The division shall establish the  
31 duties, scope, and membership of the study commission and shall  
32 also consider the feasibility of establishing a demonstration  
33 mental health court. The division shall submit a report on the  
34 study and make recommendations to the governor and the general  
35 assembly by December 1, 2012.